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In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. 520

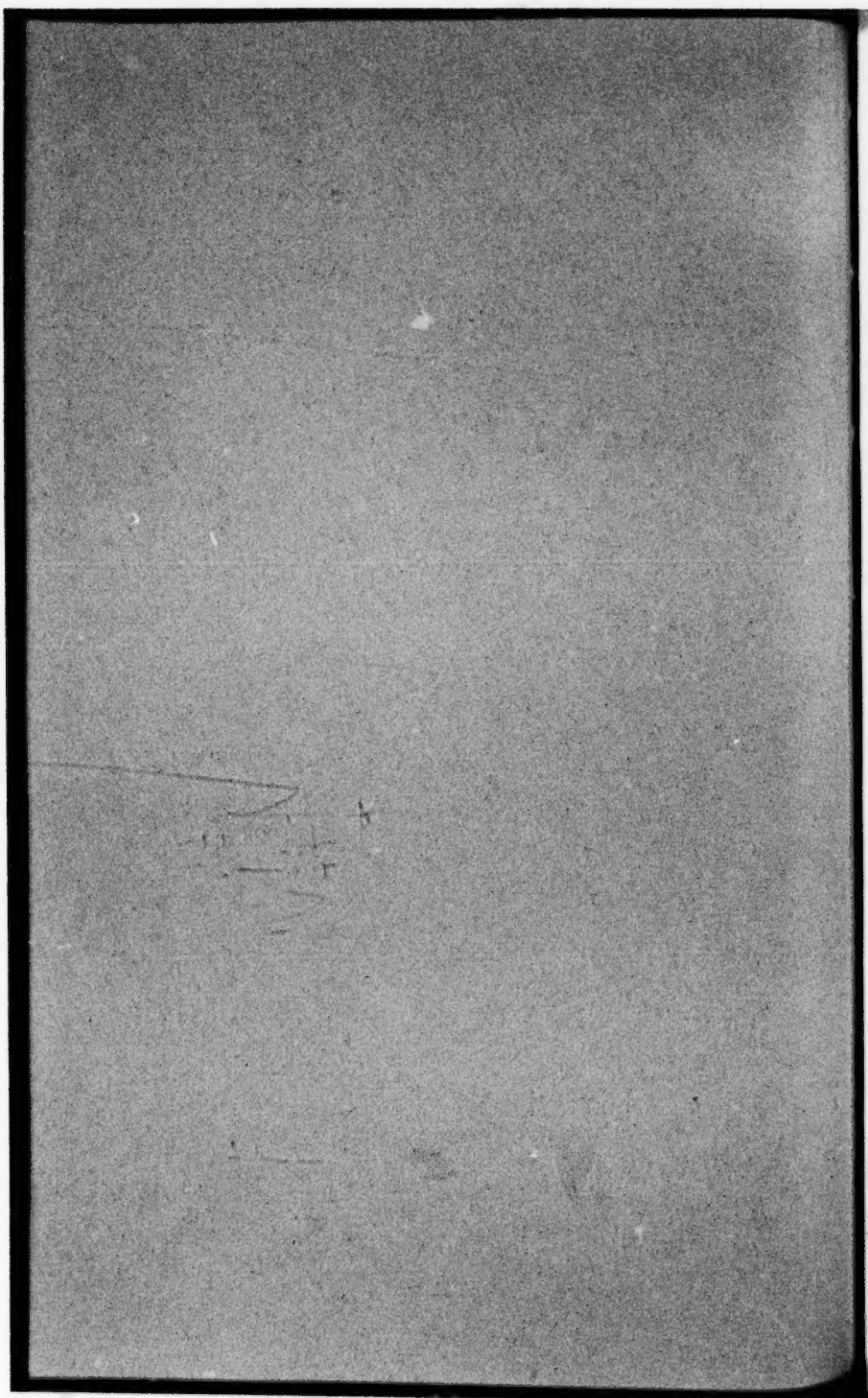
IRWIN UNGER,  
*Petitioner,*

vs.

THE OHIO STATE DENTAL BOARD,  
*Respondent.*

PETITION FOR WRIT OF CERTIORARI  
To the Supreme Court of Ohio  
and  
BRIEF OF PETITIONER,  
In Support of Petition for Writ of Certiorari,  
Together With  
The Opinion of the Supreme Court of Ohio.

WILLIAM J. CONNORAN,  
620 Williamson Building,  
Cleveland, Ohio,  
*Attorney for Petitioner.*



## INDEX.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.....	1
Summary of the Matter Involved.....	1
The Statute Involved.....	9
Jurisdiction .....	10
Reasons for Granting the Writ.....	10
BRIEF OF PETITIONER IN SUPPORT OF PETI- TION FOR WRIT OF CERTIORARI.....	13
APPENDIX—Opinion of the Supreme Court of Ohio	23

## AUTHORITIES CITED.

### Cases.

<i>Thomas A. Delaney, Petitioner, v. United States of America</i> , 263 U. S. 586, 68 Law Ed. 462.....	19
<i>James Donnelly, Plaintiff in Error v. United States</i> , 288 U. S. page 242; 57 Law Ed. 820.....	19
<i>Tumey v. State</i> , 273 U. S. 510, 71 L. Ed. 749, 47 S. Ct. 437 .....	10, 21

### Texts.

<i>American Jurisprudence</i> , Vol. 20, page 201, paragraph 452 .....	18
17 <i>Ohio Jurisprudence</i> , p. 278.....	18
<i>Wigmore's Code of the Rules of Evidence</i> , Second Edi- tion, page 259.....	18

### Statutes.

Judicial Code (As Amended by the Act of February 13, 1925 and March 8, 1939)—U. S. C. Title 28, Section 344 (b) and Section 237 (b).....	10
Ohio General Code, Section 1325.....	13, 14
Ohio General Code, Section 1329.....	15



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*Petitioner,*

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THE OHIO STATE DENTAL BOARD,  
*Respondent.*

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## **PETITION FOR WRIT OF CERTIORARI To the Supreme Court of Ohio.**

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Your petitioner respectfully prays for a writ of certiorari to review the decision of the Supreme Court of the State of Ohio in the above case.

The petitioner seeks a review of the judgment of the Supreme Court of Ohio which affirmed a judgment of the Ohio State Dental Board, whereby the petitioner without due process of law was barred of his right to practice his profession of dentistry.

### **SUMMARY OF THE MATTER INVOLVED.**

The proceedings by which the petitioner has been deprived of this valuable right took place before the Ohio State Dental Board, a body created and existing by virtue of Section 1314 of the General Code of the State of Ohio. The Board consists of five graduate dentists appointed by the Government of the State of Ohio.

On April 14, 1941, there was filed before the Board by one of their agents a statement of charges, in which the petitioner was charged with a number of violations of the State Dental Board. The charges were as follows:

The undersigned hereby charges that Dr. Irwin Unger, a duly licensed dentist by the State of Ohio, practicing in the City of Cleveland, Ohio, has in the practice and in the method of conducting his dental office, during his practice in Cleveland and vicinity, between the dates January 15, 1941, and June 19, 1941, been guilty of practices and acts violating the Dental Code of Ohio, in the following particulars, to wit:

A.

That the said Dr. Irwin Unger has employed or made use of advertising solicitors or publicity agents as herein specified.

1. Said Dr. Irwin Unger has employed Henry Urden and/or Edward Urden, doing business as the State Dental Laboratory, and/or Henry Urden and/or Edward Urden and/or State Dental Laboratory, as an advertising solicitor and/or publicity agent, between the dates of January 15, 1941, to June 19, 1941.

2. Said Dr. Irwin Unger has employed Henry Urden and/or Edward Urden as an advertising solicitor and/or publicity agent between January 15, 1941, to June 19, 1941.

3. Said Dr. Irwin Unger has made use of advertising solicitors and/or publicity agents, to wit: Henry Urden and/or Edward Urden, doing business as the State Dental Laboratory, Edward Urden and/or Henry Urden and State Dental Laboratory, between the dates of January 15, 1941, and June 19, 1941.

4. In that in October, 1939, the State Dental Laboratory was established in Cleveland, Ohio, at 378 Old Arcade; that Henry Urden and/or Edward Urden is the manager, proprietor, operator or conductor of the State Dental Laboratory; that Henry Urden and/or Edward Urden are associated and connected therewith; that said State Dental Laboratory was established and exists for the purpose of soliciting dental services and giving dental advice; that the State Dental Laboratory is in the nature of an advertising solicitor and/or publicity agent for the benefit of Dr.

Irwin Unger; that the State Dental Laboratory is acting as solicitor and/or publicity agent for said Dr. Irwin Unger in the procurement of dental patronage; that said Dr. Irwin Unger is the dentist for the said State Dental Laboratory; and that in the operation of the State Dental Laboratory Dr. Irwin Unger is part and parcel of the State Dental Laboratory; that Dr. Irwin Unger shares and/or divides professional fees with it; that as a result of the activities of the State Dental Laboratory, through newspaper advertisements and personal solicitors, said Dr. Irwin Unger, with knowledge of their source, accepted a great number of dental cases, the exact number of which is unknown to this complainant, from the State Dental Laboratory.

B.

That the said Dr. Irwin Unger has made use of advertising statements of a character tending to deceive or mislead the public as herein specified.

1. Advertisements of the State Dental Laboratory in the Cleveland Press and the Cleveland News, between the dates of January 15, 1941, to June 19, 1941, in the following particulars. A copy of said ad is marked Exhibit "A" and is attached hereto and made a part hereof.

(a) "All plates made from impressions furnished by licensed dentists." This phrase and this advertisement implies that licensed dentists are in attendance and connected with the State Dental Laboratory.

(b) The ad implies that the prices quoted in said ads includes all of the professional services required in connection with the completion of the dentures so advertised, when in truth and fact an additional charge is made by the dentist.

(c) That said advertisements in said newspapers set forth certain definite prices for dental work and plates when, as a matter of fact, no set prices are maintained, but the greatest price possible is obtained from each patient for the plates sold or the work desired to be done; and the teeth and materials used in all



cases are of the same quality and of an inferior grade regardless of the price obtained for the denture and regardless of the representation made in regard to the quality of teeth and material for the various priced dentures.

(d) In that said State Dental Laboratory did advertise unbreakable plates, when, in truth and in fact, there are no such dentures known to the profession.

C.

That said Dr. Irwin Unger has advertised prices for professional services as herein specified.

1. In that said Dr. Irwin Unger did advertise through the State Dental Laboratory in the Cleveland News and Cleveland Press prices for professional services between the dates January 15, 1941, and June 19, 1941.

D.

In that the said Dr. Irwin Unger has advertised by means of a large display, a glaring light sign or sign containing as a part thereof the representation of a tooth, teeth, bridge work or any portion of the human head in the following particulars.

1. In that the State Dental Laboratory has, in its window on Euclid Avenue, a glaring light sign.

2. In that there appears in its advertisements in the said newspapers the representation of teeth and dentures.

E.

That Dr. Irwin Unger has advertised free dental work or free examination as here specified.

1. In that Dr. Irwin Unger, through the State Dental Laboratory, in the Cleveland Press and Cleveland News, offers free dental work in the following statement: "\$2.00 credit on your new plates when you present this ad."



## F.

That the said Dr. Irwin Unger has been guilty of grossly immoral conduct tending to deceive and/or defraud the public and that such conduct has deceived and/or defrauded the said public in the following particulars.

1. Said Dr. Irwin Unger has conducted his practice and maintained dental offices in charge of laymen and unlicensed persons, to wit: Edward Urden and/or Henry Urden and/or the State Dental Laboratory, who have made examinations and diagnosis and prescribed for the dental needs of patients with the knowledge and consent of the said Dr. Irwin Unger, as heretofore set forth.

2. Said Dr. Irwin Unger takes instructions from laymen, to wit, Henry Urden and/or Edward Urden and/or State Dental Laboratory, as to the amount, type and price of dental work to be performed on the patient; and by so doing, Dr. Irwin Unger does not use his professional skill, learning and knowledge in determining the dental work and needs of the patient.

3. That said layman sells the patient whatever he wants even though it is not what the patient needs or is harmful to the patient, thus not allowing the dentist to use his professional skill, learning and knowledge in advising the patient as to his dental needs.

## G.

Said Dr. Irwin Unger has been guilty of such immoral conduct and has so conducted his office or offices as to disqualify him to practice dentistry with safety to the public of the State of Ohio, more specifically as follows:

1. Said Dr. Irwin Unger has conducted his practice and maintained dental offices in charge of laymen and unlicensed persons, to wit, Edward Urden and/or Henry Urden and/or State Dental Laboratory, who have made examinations and diagnosis and prescribed for the dental needs of patients with the knowledge and consent of the said Dr. Irwin Unger, as heretofore set forth.

2. Said Dr. Irwin Unger takes instructions from laymen, to wit, Henry Urden and/or Edward Urden and/or State Dental Laboratory, as to the amount, type and price of dental work to be performed on the patient, and by so doing, Dr. Irwin Unger does not use his professional skill, learning and knowledge in determining the dental work and needs of the patient.

3. That said layman sells the patient whatever he wants even though it is not what the patient needs or is harmful to the patient, thus not allowing the dentist to use his professional skill, learning and knowledge in advising the patient as to his dental needs.

#### H.

That said Dr. Irwin Unger, having a license to practice dentistry, entered the employment of and/or entered into arrangements with an unlicensed manager, proprietor, operator or conductor in violation of Section 1329 of the General Code in the following particulars, to wit:

1. In that Edward Urden and/or Henry Urden is the manager, proprietor or operator or conductor of a place for performing dental operations, to wit: State Dental Laboratory, to wit:

(a) In that the said Edward Urden and/or Henry Urden interview patients and make the initial examination and diagnosis.

2. That the State Dental Laboratory, Henry Urden and/or Edward Urden, doing business as the State Dental Laboratory and/or Edward Urden and/or Henry Urden, for a fee, salary or other reward, paid or to be paid either to himself or to another person, performs or advertises to perform dental operations of any kind.

3. In that Dr. Irwin Unger is employed by a manager, proprietor, operator or conductor, to wit, State Dental Laboratory, and/or Henry Urden and/or Edward Urden.

4. Said Henry Urden and/or Edward Urden and/or Henry Urden and/or Edward Urden, doing

business as the State Dental Laboratory and/or Henry Urden and/or Edward Urden, placed in the possession of Dr. Irwin Unger dental offices and/or dental equipment necessary for the handling of a dental office on the basis of a lease and/or other agreement for compensation or profit for the use of such offices or equipment when such compensation was manifestly in excess of the reasonable rental value of such premises and equipment.

5. In that the State Dental Laboratory, Henry Urden and/or Edward Urden, doing business as State Dental Laboratory and/or Henry Urden and/or Edward Urden, made other arrangements whereby they derive profit, compensation or advantage through retaining the ownership or control of dental offices or necessary dental equipment by making the same available in any manner whatsoever for the use of Dr. Irwin Unger; and that the said arrangement was not a bona-fide sale of dental equipment secured by chattel mortgage.

The undersigned hereby charges and alleges by reason of the foregoing practices, said Dr. Irwin Unger's license should be revoked or suspended by this Board, and your complainant therefore requests that notice of these charges be served upon the said Dr. Irwin Unger; and that a time and place be set for the hearing of the same in the near future as provided by statute.

On July 31, 1941, the Ohio State Dental Board found the petitioner guilty as follows:

1. That between the dates of April 15, 1941, and June 19, 1941, the said Dr. Irwin Unger has made use of advertising solicitors or publicity agents in violation of Section 1325 General Code of Ohio.

2. That during the same period the said Dr. Irwin Unger has made use of advertising statements of a character tending to deceive or mislead the public, in violation of Section 1325 General Code of Ohio.

3. That the said Dr. Irwin Unger is guilty of grossly immoral conduct tending to deceive or defraud

the public; or which disqualifies him to practice with safety to the public, in violation of Section 1325 General Code of Ohio.

4. That the said Dr. Irwin Unger, having a license to practice dentistry in the State of Ohio, was a party to an arrangement of a type prohibited by Section 1329 General Code of Ohio with the State Dental Laboratory.

and on that day revoked the right of the petitioner to practice dentistry. Error was prosecuted to the Court of Common Pleas of Cuyahoga County, and on January 16, 1942, the Court of Common Pleas of Cuyahoga County found that there was evidence that sustained only Specification A-3 of the Statement of Charges. That specification is as follows:

“Said Dr. Irwin Unger has made use of advertising solicitors and/or publicity agents, to wit: Henry Urden and/or Edward Urden, doing business as the State Dental Laboratory, Edward Urden and/or Henry Urden and State Dental Laboratory, between the dates of January 15, 1941, and June 19, 1941.”

Said Court found that the violation of that specification was sufficient justification for the Ohio State Dental Board to revoke the right of the petitioner to practice dentistry. Appeal was taken to the Court of Appeals of Cuyahoga County, which affirmed the judgment without opinion.

Petitioner further alleges that in this cause on the 11th day of August, 1943, final judgment was rendered against the petitioner by the Supreme Court of the State of Ohio. A copy of the Opinion is hereto attached and marked “Appendix No. 1.”

**THE STATUTE INVOLVED.**

General Code of Ohio Section 1325, which is as follows:

"License may be revoked or suspended, when. The state dental board may warn, reprimand, or otherwise discipline a licensee for any violation of its rules or of any laws pertaining to the practice of dentistry or dental hygiene and in addition thereto may revoke or suspend a license obtained by fraud or misrepresentation, or if the person accused is convicted subsequent to the date of his license of a felony involving moral turpitude, or is convicted for the violation of any provisions of the law regulating the practice of dentistry or dental hygiene, or becomes guilty of chronic or persistent inebriety or addiction to drugs; or if the person holding such license makes use of any advertising statements of a character tending to deceive or mislead the public, or advertises or publishes false, fraudulent or misleading statements of his superior skill or knowledge or the superior nature of his methods of treatment or practice; or advertises by means of large display, glaring light sign, or sign containing as a part thereof the representation of a tooth, teeth, bridge work or any portion of the human head; or employs or makes use of advertising solicitors or publicity agents; or advertises any free dental work or free examination; or advertises to guarantee any dental service; or to perform any dental operation painlessly; or has been found guilty of employing or permitting an unlicensed person to perform dental operations which, under this act, can only be performed by a person licensed to practice dentistry in this state; or is guilty of any grossly immoral conduct tending to deceive or defraud the public; or which disqualifies him to practice with safety to the public. All advertising by any medium whatsoever including radio, must conform to the requirements of this section."

**JURISDICTION.**

The jurisdiction of this Court is invoked under Title 28 U. S. C., Section 344 (b), Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925, and March 8, 1939.

Judgment of the Ohio State Dental Board was affirmed on July 7, 1943. Rehearing thereon was denied August 11, 1943. On the 11th day of November, 1943, it was ordered by the Supreme Court of the United States that the time for filing the petition for certiorari was extended to and including December 11, 1943.

**REASONS FOR GRANTING THE WRIT.**

The petitioner is a professional dentist, practicing his profession for a great number of years, and under the holding can no longer practice his profession. The Supreme Court held by its judgment that there was no error in the action of the Ohio State Dental Board in revoking the license of the petitioner to practice dentistry. Petitioner says he has been deprived of his right without due process of law in violation of his rights under Section 1 of the Fourteenth Amendment to the Constitution of the United States, and that he was tried before a court of the kind that was condemned in the case of *Tumey v. State*, 273 U. S. 510, 71 L. Ed. 749, 47 S. Ct. 437.

1. One member of the Ohio State Dental Board actively engaged in the securing of evidence and was financially interested in the outcome of the case, having paid money to witnesses who testified in behalf of the respondent. This Board member proceeded to sit as one of the judges until a witness pointed him out as the man who had paid him the money.

2. The case was tried on the theory of a conspiracy. The record fails to disclose any evidence of a conspiracy.

3. Hearsay evidence was admitted over petitioner's objection on the theory of a conspiracy and upon a statement that the evidence would be connected with petitioner. No testimony in any manner connecting the conversations with petitioner was offered.

Petitioner says that in the rulings and judgments made by the Supreme Court of Ohio that the court erred to the prejudice of the applicant.

WHEREFORE, your petitioner prays for allowance of a writ of certiorari from the Supreme Court of the State of Ohio to the Supreme Court of the United States and the judges thereof to the end that the record in this case may be removed into the Supreme Court of the United States and the errors complained of by your petitioner may be examined and corrected and said judgment reversed and set aside and judgment rendered for the petitioner.

IRWIN UNGER,

By WILLIAM J. CORRIGAN,

*His Attorney.*